

ESTTA Tracking number: **ESTTA459204**

Filing date: **02/29/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lorillard Licensing Company LLC
Granted to Date of previous extension	03/03/2012
Address	300 North Greene Street Suite 1601 Greensboro, NC 27401 UNITED STATES
Attorney information	Howard A. MacCord, Jr. MacCord Mason PLLC P.O. Box 2974 Greensboro, NC 27402 UNITED STATES amaccord@maccordmason.com, sdavis@maccordmason.com Phone:336.273.4422

Applicant Information

Application No	85364718	Publication date	01/03/2012
Opposition Filing Date	02/29/2012	Opposition Period Ends	03/03/2012
Applicant	The Safe Cig, LLC Suite A 1051 Cole Avenue Los Angeles, CA 90038 UNITED STATES		

Goods/Services Affected by Opposition

Class 009.


All goods and services in the class are opposed, namely: Batteries and battery chargers specifically designed for use with electronic cigarettes; USB power adapter plugs specifically designed for use with electronic cigarettes

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3043354	Application Date	11/21/2003
Registration Date	01/17/2006	Foreign Priority	NONE

		Date	
Word Mark	MAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 1975/04/15 First Use In Commerce: 1975/04/15 CIGARETTES		

Related Proceedings	none
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Attachments	76563619#TMSN.gif (1 page)(bytes) 20120229150410721.pdf (3 pages)(113046 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Howard A. MacCord, Jr./
Name	Howard A. MacCord, Jr.
Date	02/29/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No.: 85/364718
Published in the Official Gazette on January 2, 2012

Lorillard Licensing Company, LLC, Opposer

v.

The Safe Cig, LLC, Applicant

NOTICE OF OPPOSITION

Opposition No. _____

Opposer, Lorillard Licensing Company, LLC, with a business address of 300 North Greene Street, Suite 1601, hereby opposes registration of the mark MAX that is the subject of application Serial No. 85/364718, published in the Official Gazette of January 3, 2012, and requests that registration to Applicant be refused. Opposer was granted an extension of time up until March 3, 2012, as per ESTTA tracking number ESTTA454087

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer and its predecessors in interest, since at the latest, April 15, 1975, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term MAX as a trademark for cigarettes.
2. Opposer is the owner of Registration No. 3,043,354, registered on January 17, 2006, for the mark MAX for cigarettes, hereinafter referred to as the Registered Mark. That registration is valid, subsisting, unrevoked, and uncanceled and is conclusive evidence of Opposer's exclusive right to use said mark in commerce on the goods specified in the registration.

3. For many years, and long prior to Applicant's filing date, Opposer has used the Registered Mark in interstate commerce throughout the United States in connection with the sale of cigarettes.
4. Applicant has filed an intent-to-use application to register the mark MAX for Batteries and battery chargers specifically designed for use with electronic cigarettes; USB power adapter plugs specifically designed for use with electronic cigarettes. That application was filed on July 6, 2011, and was assigned Serial No. 85/364718.
5. Applicant's mark so resembles Opposer's previously used and Registered Mark MAX as to be likely, when applied to Batteries and battery chargers specifically designed for use with electronic cigarettes; USB power adapter plugs specifically designed for use with electronic cigarettes to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.
6. The Registered Mark is famous, and use in commerce of Applicant's proposed MAX mark will cause dilution of Opposer's Registered Mark.
7. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, will dilute Opposer's Registered Mark, and will give color and exclusive statutory right to Applicant in violation and derogation of prior and superior rights of Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

A duplicate copy of this Notice of Opposition and the fee required in 37 C.F.R. §2.6(a)(17) are enclosed herewith. The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 501923.

Respectfully submitted,

Lorillard Licensing Company LLC

By: _____
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ATTORNEY FOR OPPOSER

Date: February 29, 2012

Opposer's Counsel's File No.: 4800-291